

5 August 1985

MEMORANDUM FOR: Director of Personnel

VIA: Deputy Director for Policy, Analysis
and Evaluation

Chief, Policy and Review Staff

STAT FROM:

PA&E

SUBJECT: Authority to "Approve" Promotions to GSB-07

REFERENCE: Memo for DDCI fm D/Pers, Subject: Secretarial Pay Plan,
D/Pers 85-1075, dtd 5 April 1985

1. You have asked whether the Head of the Career Service may "approve" a promotion to the GSB-07 secretarial pay level, notwithstanding that you have indicated the promotion must be rescinded, because it was not in accordance with the policy and rules established in Reference, as approved by the DDCI on 1 May 1985.

2. The answer is that the Head of the Career Service has no authority to "approve" a promotion to GSB-07 that does not satisfy the criteria and requirements for such promotion as elaborated in Reference, and that any such purported "promotion" is of no effect and is not binding. Your communication to the Head of the Career Service that a particular "promotion" to GSB-07 cannot be effected, because the conditions of Reference are not met, operates to "rescind" the attempted "promotion", unless and until your determination of noncompliance is reversed by higher authority (i.e., the Executive Director or above) or legal decision.

3. The respective functions of Career Service Heads and the Director of Personnel with respect to promotions are delineated in [redacted] That provision states:

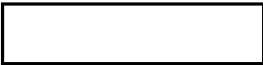
The Director of Personnel is responsible for reviewing all promotion requests and approving promotion actions that conform to the provisions of Agency regulations. The officials listed below are responsible for approving promotion requests:

- (a) The DCI and the DDCI, to and within the SIS.
- (b) The Head of the Career Service, to GS-15.

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- (c) The deputy to the Head of the Career Service, to GS-08 and above secretarial personnel.
- (d) The Head of the Sub-Group or, as appropriate, the DDO, to GS-14 and below (except as addressed in paragraph (c) above).

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 is to similar effect with regard to your authorities:

The Director of Personnel is responsible for:

- (a) Ensuring compliance with this regulation by continuous review of the Agency's comparative evaluation and promotion program.
- (b) Reviewing all promotion requests and approving promotion actions that conform to the provisions of Agency regulations.

Thus, Career Service Heads approve promotion requests, and approval of such requests normally will result in your approval of a corresponding promotion action. However, you are charged by regulation with reviewing promotion requests for their conformance with the provisions of Agency regulations and disapproving any promotion actions that are not in such conformity. Your refusal to approve or authenticate a promotion action, on the grounds that the underlying "promotion" was unauthorized and beyond the powers of the Career Service Head, constitutes a disapproval of "promotion" unless and until the dispute is resolved at a higher echelon.

4. Another way to put the point is that where the Head of Career Service purports to approve a "promotion" not authorized by Agency regulations, that action is ultra vires and legally a nullity, and thus there simply is no underlying "promotion" for which a corresponding action could be written or effectuated.

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